

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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May 21, 1991

VIA UPS OVERNIGHT

Dave Perry
820 Lawn Ct.
Tracy, CA 95376

Joseph Di Prisco
Secretary-Treasurer
IBT Local Union 302
492 C St., Suite A
Hayward, CA 94541

Chuck Mack
President
Joint Council #7
150 Executive Park Blvd. #2900
San Francisco, CA 94134

Re: Election Office Case No. P-741-LU302-CSF

Gentlemen:

A protest was filed pursuant to Article XI, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by David Perry. Mr. Perry is the Vice-President and Business Agent of Local 302 and was elected as delegate in Local 302's delegate election which was held on March 23, 1991. In his protest, Mr. Perry alleges that Joe Di Prisco, President of Local 302, and Chuck Mack, President of Joint Council 7, filed a grievance against him for the sole purpose of harassing Mr. Perry in the exercise of his political rights in violation of Article VIII §10 of the *Rules*. Mr. Perry also alleges that Mr. Di Prisco has engaged in intimidation and coercion of other members of Local 302 in an attempt to persuade those members to submit testimony against Mr. Perry. Finally, Mr. Perry alleges that Mr. Di Prisco used Union funds to distribute campaign literature critical of Mr. Perry's performance as a Local Union Officer. Each of the three allegations will be reviewed in separately numbered sections below.

I. The Use of Union Funds to Distribute Campaign Literature

Mr. Perry alleges that Joe Di Prisco used union funds and/or facilities to distribute campaign literature critical of Mr. Perry. The investigation disclosed the following facts. On February 26, 1991, pursuant to his decision in P-442-LU302-CSF *et al.*, the Election Officer ordered Mr. Perry to post a notice on all Local Union 302 bulletin boards stating that Mr. Perry had violated the *Rules* by using a Union publication to support his

candidacy for delegate to the IBT Convention. In accordance with the Election Officer's decision, Mr. Perry posted the notice on all Local Union bulletin boards. Two weeks after the conclusion of Local 302's delegate election, amended copies of the notice were placed on employee's cars at Berkeley Farms, an employer of Local 302 members. The amended notice was also posted in other locations at the Berkely facility. Across the top of the notice were the words "GUILTY AGAIN". The notice also contained the following statement, "BESIDES ILLEGALLY USING UNION GAS CARDS AND CREDIT CARDS, NOW THE ELECTION OFFICER HAS FOUND PERRY GUILTY AGAIN. WOULD YOU BUY A USED CAR FROM THIS MAN?"¹

Mr. Perry contends that Joe Di Prisco used Union funds to alter, reproduce and distribute the notice. Don Twohey, the Election Office Regional Coordinator, interviewed Mr. Perry concerning the factual basis for the allegations. Mr. Perry stated in the interview that he has no direct evidence showing that Mr. Di Prisco used Union funds or facilities to distribute this campaign literature. Perry further states that he did not observe Mr. Di Prisco distributing the notice nor did he ever see the literature in Mr. Di Prisco's possession. Instead, Mr. Perry stated that his allegations were based on the statements of unidentified members working at Berkeley Farms who allegedly observed the material being distributed. Mr. Perry admits that none of the Berkeley Farms employees who observed the literature being distributed stated that Mr. Di Prisco was the person distributing the literature. In fact, Mr. Perry stated that the physical description of the person distributing the literature matched that of another member employed by Safeway, whom Perry describes as a friend of Mr. Di Prisco's. Mr. Perry claims that Mr. Di Prisco is implicated in the distribution of the literature because the literature contained an unsigned copy of the notice he was required to post by reason of the Election Officer's decision in Election Office Case No. P-442-LU302-CSF. Perry claims that Mr. Di Prisco was the only person who had access to an unsigned copy of the notice.

Article VIII §10 of the *Rules* provides that:

Union funds, facilities, equipment, stationary, etc. may not be used to assist in campaigning unless a candidate reimburses the Union for such costs and such goods and services are equally available to all candidates and all candidate are notified in advance of the availability of such goods and services.

The investigation did not disclose any evidence to indicate that the flyers were distributed through the use of the Union funds or facilities. Mr. Twohey interviewed Mr. Di Prisco who denied any knowledge of the flyers and stated that to the best of his

¹The issue of Mr. Perry's use of his Union credit card has been an issue of contention between Mr. Perry and Mr. DiPrisco for nearly a year. See Section II *infra*. See also Election Office Case No. P-696-LU302-CSF.

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knowledge, no Union funds or facilities were used to reproduce or distribute the literature. Moreover, the evidence did not establish that any other employees of the Local were involved in the distribution of the literature.

The only concrete evidence produced by Mr. Perry is that Joe Di Prisco at one time had an unsigned copy of the notice and that the copy of the notice contained in the flyer was also unsigned. The investigation did not disclose any other facts to support Perry's allegation. The unsigned notice was attached to the Election Officer's decision in Election Office Case No. P-442-LU302-CSF et al. Since all Election Officer decisions are public documents, others beside Mr. DiPrisco may have had, or obtained, access to the unsigned notice.

In addition, the flyer was distributed about two weeks after the conclusion of Local 302's delegate election. Thus the literature could not have impacted on Mr. Perry's campaign for delegate. The Election Officer is well aware of the highly adversarial relationship between Mr. Perry and Mr. Di Prisco. The present conflict appears to be but another episode in the continuing struggle for control of the Local, a struggle that had been raging between Perry and Di Prisco for many months. Accordingly, there is no evidence to support Mr. Perry's allegation with respect to this claim and his protest is therefore **DENIED**.

II. Alleged of Intimidation and Coercion of Local 302 Members by Mr. Di Prisco

In his protest, Mr. Perry also alleges that Joe Di Prisco personally coerced and threatened several members with loss of employment and/or suspensions from Union membership if they did not sign statements against him for misuse of Union funds. Specifically Mr. Perry alleges that Mr. Di Prisco harassed Local 302 member Eddie Burke. The investigation disclosed that a conflict arose between Mr. Di Prisco and Mr. Perry concerning Mr. Perry's alleged misuse of a Union credit card in April, 1990. The dispute involved Mr. Perry's use of the credit card to pay a restaurant bill for a dinner Mr. Perry attended with a few members of Local 302. After the bill was received by the Local Union, Mr. Di Prisco started investigating the propriety of the credit card bill submitted by Mr. Perry. Pursuant to his investigation, he spoke to Mr. Perry as well as at least one other member of Local 302 who was alleged to have been in attendance at the dinner, namely Eddie Burke. Perry claims that Di Prisco told Mr. Burke, "Listen, we've got your buddy nailed and if you don't sign a document stating you were not there, and we find out later you were lying, we'll do the same thing to you that we did to him."

Mr. Burke was interviewed by the Washington, D.C. Election Office staff. Mr. Burke stated that a few days prior to the delegate election, Mr. Di Prisco did question him about whether he had dinner with Mr. Perry in April of 1990. Mr. Burke further stated Di Prisco pressured him to sign a statement about his presence at the dinner.

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The investigation did not disclose any evidence indicating that Mr. Di Prisco's questioning of Mr. Burke was in any way related to Mr. Perry's candidacy for delegate in Local 302's delegate election. In fact Mr. Di Prisco's investigation of Mr. Perry's use of the credit card commenced several months before the delegate election was held in Local 302. Moreover, the issue raises questions related to internal union matters, i.e., the propriety of utilization of expense accounts, which in this instance, since it does not implicate the delegate or International election process, is beyond the jurisdiction of the Election Officer. Accordingly, there is no evidence to support Mr. Perry's allegations and his protest with respect to this issue is DENIED.

II. Filing of Grievance Against Mr. Perry

Mr. Perry also alleges that Mr. Di Prisco and Joint Council President Chuck Mack are using the grievance procedure contained in the collective bargaining agreement between the Union and Safeway to harass Mr. Perry. The investigation disclosed the following facts. After Mr. Perry was suspended as a Business Agent by the Joint Council, see Election Officer Case No. P-675-LU302-CSF, he contacted Safeway, his previous employer, and requested that he be called back to work. Mr. Perry states that when he was elected Business Agent, the company granted him a leave of absence and agreed to retain his place on the seniority list. After Mr. Perry contacted the company, the company permitted him to return to work with seniority. Mr. Doyle E. Peebles, an employee at Safeway and member of Local 302, filed a grievance alleging that his seniority rights were adversely affected by the company's decision to permit Mr. Perry to come back to work with seniority.

The collective bargaining agreement between Local 302 and Safeway does not contain any article or clause which directly addresses the issue of leaves of absence. The investigation conducted by Don Twohey, the Regional Coordinator indicated that there is some disagreement between the company and the Union concerning the company's past practice with respect to permitting leave of absences and the retention and/or accumulation of seniority by members taking such leaves. The investigation disclosed that there is an arguable dispute as to whether or not Perry was properly reinstated with full seniority rights by Safeway following his leave of absence. Therefore, on its face, the grievance filed by Mr. Peebles appears to raise an issue which is the proper subject of a grievance.

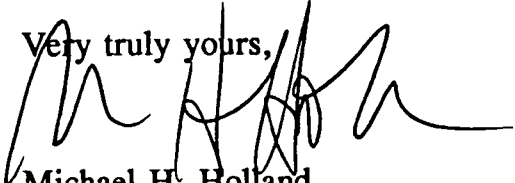
Moreover, the evidence disclosed pursuant to the investigation conducted by Mr. Twohey does not sustain Mr. Perry's allegation that Mr. Di Prisco or Mr. Mack were using the grievance procedure to harass Mr. Perry. Election Office representatives interviewed Bill Green, Manager of Labor Relations for Safeway, who stated that Mr. Mack never contacted him in reference to the matter. Mr. Mack was also interviewed and he denied that he contacted any company representatives about Mr. Perry's reinstatement. Mr. Rollens, the Safeway supervisor who directly supervises Mr. Perry, also stated that he was not contacted by Mr. Mack in reference to the grievance. The investigation did not establish that Mr. Mack was involved in any way with the filing or processing of this grievance. As for Mr. Di Prisco's involvement in the grievance, the

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investigation disclosed that Mr. Di Prisco's efforts on behalf of the grievant, Mr. Peebles, were consistent with his duties as Secretary-Treasurer of Local 302.

Because Mr. Peeble's grievance raises an issue which requires an interpretation of the collective bargaining agreement, and since Mr. Di Prisco's involvement in the processing of the grievance is consistent with his obligations as Secretary-Treasurer, the Election Officer concludes that the allegations raised by Mr. Perry are unsupported by the evidence. Accordingly, the protest is **DENIED**.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,

Michael H. Holland

MHH/pjm

cc: Frederick B. Lacey, Independent Administrator

Donald E. Twohey, Regional Coordinator
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